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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

UNITED STATES OF AMERICA and
THE STATE OF OREGON,

Plaintiffs,

v.

THE CITY OF MILLERSBURG, OREGON,

Defendant.

Civil Action No.:

COMPLAINT: ENVIRONMENTAL
ACTION UNDER §§ 106(a)
107(a) AND 113(g) OF
CERCLA, 42 U.S.C.
§§ 9606(a), 9607(a) AND
9613(g) AND ORS 465.255 AND
465.260

COMPLAINT

Plaintiffs, the United States of America, by the authority of the Attorney General of the United States and on behalf of the United States Environmental Protection Agency ("USEPA"), and the State of Oregon, by the authority of the Attorney General of the State of Oregon and on behalf of the State of Oregon Department of Environmental Quality ("ODEQ"), allege as follows:

INTRODUCTION

1. This is a civil action under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., as amended, and Oregon Revised Statutes ("ORS") 465.200 et seq., for response costs, declaratory relief and injunctive relief regarding releases and threatened releases of hazardous substances from the Teledyne Wah Chang Albany Site ("the Site"), located in Millersburg, Oregon.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action and the defendant pursuant to Sections 106(a), 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this District pursuant to Sections 106(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a) and 9613(b), and 28 U.S.C. § 1391(b), because the claims arose in this District and releases and/or threatened releases of hazardous substances occurred in this District.

DEFENDANT

4. Defendant City of Millersburg ("the City") is an incorporated city in Linn County, Oregon.

GENERAL ALLEGATIONS

5. The property that is the subject of this action is a portion of the Site known as the Soil Amendments Area. The Site is the location of an operating manufacturer of zirconium and hafnium metals. The Site consists of approximately 225 acres, and is located in the 100- and 500-year floodplains of the Willamette River, approximately 20 miles south of Salem, Oregon.

6. Wah Chang Corporation began operations at the Site in 1956. In 1967, Teledyne Industries, Inc., purchased Wah Chang Corporation, and took over operations as TWCA.

7. TWCA's manufacturing process for zirconium and hafnium metals at the Site generates sludge, waste water, residues and gases as by-products. Since operations began in 1957, waste materials from the refining processes were deposited into four unlined ponds on the Site. TWCA disposed of wastes on the Site containing, *inter alia*, radionuclides, volatile organic compounds and hydrous metal precipitate.

8. Between 1972 and 1978, chlorinator residues containing low level radioactive waste from the facility's sand chlorinator were disposed of in a pile on the Site. Solid wastes containing manganese chloride generated during non-ferrous metals manufacturing processes were stored in a resource and recovery pile on the Site.

9. Defendant the City of Millersburg owns certain real property at the Site commonly referred to as the Soil Amendment Area. In 1975 and 1976, Teledyne obtained solid waste permits from the Oregon Department of Environmental Quality to use solids from the primary wastewater treatment plant experimentally as a soil amendment. The solids were applied to the Soil Amendment Area once in 1976. The solids contained low levels of metals, radionuclides and organic compounds.

10. The Site was listed on the National Priorities List in October 1983, based on a preliminary assessment and site investigation conducted by EPA which identified human health and environmental risks at the Site.

11. EPA identified forty-seven chemicals of potential concern in soils at the Site and in the groundwater underlying the Site. The contaminants include volatile organic compounds (tetrachloroethane, 1,1 dichloroethane, trichloroethylene, perchloroethene, 1,2 dichloroethane and vinyl chloride), polychlorinated bipenyls ("PCBs"), magnesium, manganese, methyl isobutyl ketone ("MIKB"), ammonia, thorium, radium, uranium, fluoride and arsenic.

12. On May 4, 1987, EPA and TWCA entered into an Administrative Order on Consent to conduct a Remedial Investigation/Feasibility Study ("RI/FS") at the Site. In March 1993, TWCA completed the RI/FS for the Site. The RI/FS indicated that the radionuclide contamination in the Soil Amendment Area could result in an unacceptable risk from radon inhalation in buildings constructed

on this area, and that organic compounds are above levels that would allowing unrestricted use of the property.

13. On June 10, 1994, EPA issued a Record of Decision (“ROD”) selecting the final remedial action for the Groundwater and Sediments operable unit. The selected remedy includes: extraction and treatment of contaminated groundwater; slope erosion protection on Truax creek, a tributary to the Willamette River; removal of approximately 3,600 cubic yards of contaminated sediments from surface waters flowing through and adjacent to the site; and establishing deed restrictions, institutional controls and environmental evaluations to effectuate the remedy.

14. On July 21, 1995, EPA issued a ROD selecting the final remedial action for the Surface and Subsurface Soil operable unit. The selected remedy includes limited excavation and offsite disposal of soils exceeding gamma radiation action levels.

15. As of May 10, 2005, the plaintiffs have incurred unreimbursed response costs in excess of \$91,964.95 in connection with the Soil Amendment Area portion of the Site, and will continue to incur response costs as a result of the releases and threatened releases of hazardous substances at or from the Site.

16. The State of Oregon has conducted monitoring and oversight of the assessments, studies, reviews and RODs performed by EPA with respect to the Site, as set forth above.

CLAIM FOR RELIEF OF THE UNITED STATES AND THE STATE OF OREGON
RECOVERY OF RESPONSE COSTS UNDER SECTION 107(a)

17. Paragraphs 1 through 16 are realleged and incorporated herein by reference.

18. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

(1) the owner and operator of a vessel or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility . . . owned or operated by another party or entity and containing such hazardous substances

* * *

shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government or a State . . . not inconsistent with the national contingency plan

...

19. Section 113(g)(2)(B) of CERCLA, 42 U.S.C. § 9613(g)(2)(B), provides in pertinent part:

In any such action described in this subsection [an action for recovery of costs under Section 107 of CERCLA], the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.

20. There have been "releases," "threatened releases" and "disposals" of hazardous substances at or from the Site, as those terms are defined in Sections 101(29) and 101(22) of CERCLA, 42 U.S.C. §§ 9601(29) and (22).

21. Tetrachloroethane, 1,1 dichloroethane, trichloro-ethylene, perchloroethene, 1,2 dichloroethane, vinyl chloride, PCBs, manganese, MIKB, ammonia, thorium, radium, uranium, fluoride and arsenic are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

22. The City is, within the meaning of Section 101(20), the "owner" and/or "operator" of that portion of the Site known as the Soil Amendment Area on which hazardous substances have been deposited, stored, disposed of, placed, or otherwise come to be located, and is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. §§ 9601(20) and (21).

23. The Soil Amendment Area, which contains hazardous substances, is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

24. As a result of releases of hazardous substances at the Site, the plaintiffs have incurred costs in conducting "response" actions, as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), that are not inconsistent with the National Contingency Plan, 40 C.F.R. § 300.1 et seq.

25. Defendant City of Millersburg is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all costs incurred and to be incurred by the plaintiffs in response to releases of hazardous substances at the Soil Amendment Area, and the United States and the State of Oregon, under Section 113(g) of CERCLA, 42 U.S.C. § 9613(g), are entitled to a declaration of liability in their favor.

CLAIM FOR RELIEF OF THE UNITED STATES
INJUNCTIVE RELIEF UNDER SECTION 106(a)

26. Paragraphs 1 through 25 are realleged and incorporated herein by reference.

27. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides in pertinent part:

In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

28. The President's functions under Section 106(a), 42 U.S.C. § 9606(a), have been delegated to the Administrator of the Environmental Protection Agency.

29. There is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of actual or threatened releases of hazardous substances at and from the Soil Amendment Area.

30. Defendant City of Millersburg is liable to the United States to perform the injunctive relief, including, as set forth in the ROD, the final remedial action for the Soil Amendment Area.

CLAIM FOR RELIEF OF THE STATE OF OREGON
RECOVERY OF RESPONSE COSTS UNDER ORS 465.255

31. Paragraphs 1 through 16 are realleged and incorporated herein by reference.

32. ORS 465.255 provides, in pertinent part:

- (1) The following persons shall be strictly liable for those remedial action costs incurred by the state or any other person that are attributable to or associated with a facility and for damages for injury to or destruction of any natural resources caused by a release.
 - (a) Any owner or operator at or during the time of the acts or omissions that resulted in the release.
 - (b) Any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in the release, and who know or reasonably should have known of the release when the person first became the owner or operator.

33. Tetrachloroethane, 1,1 dichloroethane, trichloro-ethylene, perchloroethene, 1,2 dichloroethane, vinyl chloride, PCBs, manganese, MIKB, ammonia, thorium, radium, uranium, fluoride and arsenic are "hazardous substances" within the meaning of ORS 465.200(16).

34. The presence of hazardous substances at the Site constitutes a "release" into the environment within the meaning of ORS 465.200(22).

35. The Soil Amendment Area portion of the Site is a "facility" within the meaning of ORS 465.200(13).

36. The City is an "owner or operator" of a facility within the meaning of ORS 465.200(20).

37. As a result of releases of hazardous substances at the Site, ODEQ has incurred "remedial action costs" as defined in ORS 465.200(24).

38. The City is liable under ORS 465.255(1) for all remedial action costs incurred or to be incurred by ODEQ that are attributable to or associated with remedial action at the Soil Amendment Area.

CLAIM FOR RELIEF OF THE STATE OF OREGON
INJUNCTIVE RELIEF UNDER ORS 465.260(5)

39. Paragraphs 1 through 16 and 33 through 38 are realleged and incorporated herein by reference.

40. ORS 465.260 provides, in pertinent part:

COMPLAINT

- (5) The director may request the Attorney General to bring an action or proceed for legal or equitable relief, in the circuit court of the county in which the facility is located or in Marion County, as may be necessary:

* * *

- (b) To abate any imminent and substantial danger to the public health, safety, welfare or the environment related to a release.

41. There is or may be an imminent and substantial danger to the public health, safety, welfare or the environment because of actual or threatened releases of hazardous substances at and from the Soil Amendment Area.

42. The City is liable to ODEQ to perform as injunctive relief the final remedial action for the Soil Amendment Area as set forth in the ROD.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs, the United States of America and the State of Oregon, respectfully request that the Court:

- A. Enter judgment against the City, for all costs incurred and to be incurred by the plaintiffs in response to releases or threatened releases of hazardous substances at the Site, including expenses and costs of enforcement;
- B. Award the plaintiffs prejudgment interest on their response costs;
- C. Enter a declaratory judgment in favor of the plaintiffs on liability that will be binding on any subsequent action or actions to recover further response costs or damages;
- D. Order the City to take all actions necessary to remedy the conditions at the Site that may present an imminent and substantial endangerment to the public health or welfare or the environment; and

E. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

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COMPLAINT

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